

**AMENDMENTS RELATED TO A TAX, FEE, OR CHARGE****ADMINISTERED BY THE STATE TAX****COMMISSION**

2010 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill amends the General Taxation Policies chapter to address the taxes, fees, and charges administered by the State Tax Commission and the calculation of interest related to a tax, fee, or charge administered by the State Tax Commission.

**Highlighted Provisions:**

This bill:

- ▶ addresses definitions including defining the taxes, fees, and charges administered by the State Tax Commission;
- ▶ addresses the calculation of interest related to a tax, fee, or charge administered by the State Tax Commission, including:
  - providing that under certain circumstances interest is allowed after a 45-day period if a return or amended return is filed electronically; and
  - providing that under certain circumstances interest is allowed after a 90-day period if a return or amended return is not filed electronically; and
- ▶ makes technical and conforming changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**59-1-401**, as last amended by Laws of Utah 2009, Chapters 31, 203, 212, and 336

**59-1-402**, as last amended by Laws of Utah 2005, Chapter 264

**59-1-1402**, as enacted by Laws of Utah 2009, Chapter 212

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **59-1-401** is amended to read:

**59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.**

(1) As used in this section:

(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the commission:

(i) has implemented the commission's GenTax system; and

(ii) at least 30 days before implementing the commission's GenTax system as described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website stating:

(A) the date the commission will implement the GenTax system with respect to the tax, fee, or charge; and

(B) that, at the time the commission implements the GenTax system with respect to the tax, fee, or charge:

(I) a person that files a return after the due date as described in Subsection (2)(b) is subject to the penalty described in Subsection (2)(c)(ii); and

(II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is subject to the penalty described in Subsection (3)(b)(ii).

(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or charge, the later of:

(i) the date on which the commission implements the commission's GenTax system with respect to the tax, fee, or charge; or

(ii) 30 days after the date the commission provides the notice described in Subsection (1)(a)(ii) with respect to the tax, fee, or charge.

(c) ~~(i)~~ (i) ~~["Tax"]~~ Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

~~(i)~~ (A) a tax, fee, or charge the commission administers under:

~~(A)~~ (I) this title;

~~(B)~~ (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

~~[(C)]~~ (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

~~[(D)]~~ (IV) Section 19-6-410.5;

~~[(E)]~~ (V) Section 19-6-714;

~~[(F)]~~ (VI) Section 19-6-805;

(VII) Section 34A-2-202;

~~[(G)]~~ (VIII) Section 40-6-14;

~~[(H)]~~ (IX) Section 69-2-5;

~~[(I)]~~ (X) Section 69-2-5.5; or

~~[(J)]~~ (XI) Section 69-2-5.6; or

~~[(K)]~~ (B) another amount that by statute is subject to a penalty imposed under this

section.

(ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

(A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

(B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

(C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

(D) Chapter 3, Tax Equivalent Property Act;

(E) Chapter 4, Privilege Tax; or

(F) Chapter 13, Part 5, Interstate Agreements.

(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated tax, fee, or charge.

(2) (a) The due date for filing a return is:

(i) if the person filing the return is not allowed by law an extension of time for filing the return, the day on which the return is due as provided by law; or

(ii) if the person filing the return is allowed by law an extension of time for filing the return, the earlier of:

(A) the date the person files the return; or

(B) the last day of that extension of time as allowed by law.

(b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a return after the due date described in Subsection (2)(a).

(c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

(i) if the return described in Subsection (2)(b) is filed with respect to an unactivated

94 tax, fee, or charge:

95 (A) \$20; or

96 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

97 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,

98 fee, or charge, beginning on the activation date for the tax, fee, or charge:

99 (A) \$20; or

100 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is

101 filed no later than five days after the due date described in Subsection (2)(a);

102 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed

103 more than five days after the due date but no later than 15 days after the due date described in

104 Subsection (2)(a); or

105 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is

106 filed more than 15 days after the due date described in Subsection (2)(a).

107 (d) This Subsection (2) does not apply to:

108 (i) an amended return; or

109 (ii) a return with no tax due.

110 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

111 (i) the person files a return on or before the due date for filing a return described in

112 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due

113 date;

114 (ii) the person:

115 (A) is subject to a penalty under Subsection (2)(b); and

116 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the

117 due date for filing a return described in Subsection (2)(a);

118 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and

119 (B) the commission estimates an amount of tax due for that person in accordance with

120 Subsection 59-1-1406(2);

121 (iv) the person:

122 (A) is mailed a notice of deficiency; and

123 (B) within a 30-day period after the day on which the notice of deficiency described in

124 Subsection (3)(a)(iv)(A) is mailed:

- 125 (I) does not file a petition for redetermination or a request for agency action; and  
126 (II) fails to pay the tax, fee, or charge due on a return;  
127 (v) (A) the commission:  
128 (I) issues an order constituting final agency action resulting from a timely filed petition  
129 for redetermination or a timely filed request for agency action; or  
130 (II) is considered to have denied a request for reconsideration under Subsection  
131 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed  
132 request for agency action; and  
133 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period  
134 after the date the commission:  
135 (I) issues the order constituting final agency action described in Subsection  
136 (3)(a)(v)(A)(I); or  
137 (II) is considered to have denied the request for reconsideration described in  
138 Subsection (3)(a)(v)(A)(II); or  
139 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date  
140 of a final judicial decision resulting from a timely filed petition for judicial review.  
141 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:  
142 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with  
143 respect to an unactivated tax, fee, or charge:  
144 (A) \$20; or  
145 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or  
146 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with  
147 respect to an activated tax, fee, or charge, beginning on the activation date:  
148 (A) \$20; or  
149 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated  
150 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a  
151 return described in Subsection (2)(a);  
152 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,  
153 fee, or charge due on the return is paid more than five days after the due date for filing a return  
154 described in Subsection (2)(a) but no later than 15 days after that due date; or  
155 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated

tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a return described in Subsection (2)(a).

(4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a person allowed by law an extension of time for filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not including the extension of time, the person fails to pay:

(i) for a person filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

(ii) for a person filing an individual income tax return under Chapter 10, Individual Income Tax Act, the payment required by Subsection 59-10-516(2).

(b) For purposes of Subsection (5)(a), the penalty per month during the period of the extension of time for filing the return is an amount equal to 2% of the tax due on the return, unpaid as of the day on which the return is due as provided by law.

(6) If a person does not file a return within an extension of time allowed by Section 59-7-505 or 59-10-516, the person:

(a) is not subject to a penalty in the amount described in Subsection (5)(b); and

(b) is subject to a penalty in an amount equal to the sum of:

(i) a late file penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time; and

(ii) a late pay penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time.

(7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection (7)(a).

(i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax, fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that is due to negligence.

(ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire underpayment.

(iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 50% of the entire underpayment.

(iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed penalty.

(i) The notice of proposed penalty shall:

(A) set forth the basis of the assessment; and

(B) be mailed by certified mail, postage prepaid, to the person's last-known address.

(ii) Upon receipt of the notice of proposed penalty, the person against whom the

218 penalty is proposed may:

219 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

220 or

221 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

222 (iii) A person against whom a penalty is proposed in accordance with this Subsection  
223 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with  
224 the commission.

225 (iv) (A) If the commission determines that a person is liable for a penalty under this  
226 Subsection (7), the commission shall assess the penalty and give notice and demand for  
227 payment.

228 (B) The commission shall mail the notice and demand for payment described in  
229 Subsection (7)(b)(iv)(A):

230 (I) to the person's last-known address; and

231 (II) in accordance with Section 59-1-1404.

232 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not  
233 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

234 (i) a court of competent jurisdiction issues a final unappealable judgment or order  
235 determining that:

236 (A) the seller meets one or more of the criteria described in Subsection  
237 59-12-107(1)(a); and

238 (B) the commission or a county, city, or town may require the seller to collect a tax  
239 under Subsections 59-12-103(2)(a) through (d); or

240 (ii) the commission issues a final unappealable administrative order determining that:

241 (A) the seller meets one or more of the criteria described in Subsection  
242 59-12-107(1)(a); and

243 (B) the commission or a county, city, or town may require the seller to collect a tax  
244 under Subsections 59-12-103(2)(a) through (d).

245 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not  
246 subject to the penalty under Subsection (7)(a)(ii) if:

247 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order  
248 determining that:



(I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

and

(II) the commission or a county, city, or town may require the seller to collect a tax

under Subsections 59-12-103(2)(a) through (d); or

(B) the commission issues a final unappealable administrative order determining that:

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

and

(II) the commission or a county, city, or town may require the seller to collect a tax

under Subsections 59-12-103(2)(a) through (d); and

(ii) the seller's intentional disregard of law or rule is warranted by existing law or by a

nonfrivolous argument for the extension, modification, or reversal of existing law or the

establishment of new law.

(8) The penalty for failure to file an information return, information report, or a

complete supporting schedule is \$50 for each information return, information report, or

supporting schedule up to a maximum of \$1,000.

(9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay

or impede administration of a law relating to a tax, fee, or charge and files a purported return

that fails to contain information from which the correctness of reported tax, fee, or charge

liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is

substantially incorrect, the penalty is \$500.

(10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by

Subsection 59-12-108(1)(a):

(i) is subject to a penalty described in Subsection (2); and

(ii) may not retain the percentage of sales and use taxes that would otherwise be

allowable under Subsection 59-12-108(2).

(b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as

required by Subsection 59-12-108(1)(a)(ii)(B):

(i) is subject to a penalty described in Subsection (2); and

(ii) may not retain the percentage of sales and use taxes that would otherwise be

allowable under Subsection 59-12-108(2).

(11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

(i) commits an act described in Subsection (11)(b) with respect to one or more of the following documents:

(A) a return;

(B) an affidavit;

(C) a claim; or

(D) a document similar to Subsections (11)(a)(i)(A) through (C);

(ii) knows or has reason to believe that the document described in Subsection (11)(a)(i) will be used in connection with any material matter administered by the commission; and

(iii) knows that the document described in Subsection (11)(a)(i), if used in connection with any material matter administered by the commission, would result in an understatement of another person's liability for a tax, fee, or charge.

(b) The following acts apply to Subsection (11)(a)(i):

(i) preparing any portion of a document described in Subsection (11)(a)(i);

(ii) presenting any portion of a document described in Subsection (11)(a)(i);

(iii) procuring any portion of a document described in Subsection (11)(a)(i);

(iv) advising in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);

(v) aiding in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);

(vi) assisting in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i); or

(vii) counseling in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i).

(c) For purposes of Subsection (11)(a), the penalty:

(i) shall be imposed by the commission;

(ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

(iii) is in addition to any other penalty provided by law.

(d) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (11).

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

commission may make rules prescribing the documents that are similar to Subsections (11)(a)(i)(A) through (C).

(12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as provided in Subsections (12)(b) through (e).

(b) (i) A person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the penalty may not:

(A) be less than \$500; or

(B) exceed \$1,000.

(c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this title or any lawful requirement of the commission, fails to make, render, sign, or verify a return or to supply information within the time required by law, or who makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false or fraudulent information, is guilty of a third degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the penalty may not:

(A) be less than \$1,000; or

(B) exceed \$5,000.

(d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law, guilty of a second degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the penalty may not:

(A) be less than \$1,500; or

(B) exceed \$25,000.

(e) (i) A person is guilty of a second degree felony if that person commits an act:

(A) described in Subsection (12)(e)(ii) with respect to one or more of the following documents:

342 (I) a return;

343 (II) an affidavit;

344 (III) a claim; or

345 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

346 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in

347 Subsection (12)(e)(i)(A):

348 (I) is false or fraudulent as to any material matter; and

349 (II) could be used in connection with any material matter administered by the

350 commission.

351 (ii) The following acts apply to Subsection (12)(e)(i):

352 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

353 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

354 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

355 (D) advising in the preparation or presentation of any portion of a document described

356 in Subsection (12)(e)(i)(A);

357 (E) aiding in the preparation or presentation of any portion of a document described in

358 Subsection (12)(e)(i)(A);

359 (F) assisting in the preparation or presentation of any portion of a document described

360 in Subsection (12)(e)(i)(A); or

361 (G) counseling in the preparation or presentation of any portion of a document

362 described in Subsection (12)(e)(i)(A).

363 (iii) This Subsection (12)(e) applies:

364 (A) regardless of whether the person for which the document described in Subsection

365 (12)(e)(i)(A) is prepared or presented:

366 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

367 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

368 (B) in addition to any other penalty provided by law.

369 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the

370 penalty may not:

371 (A) be less than \$1,500; or

372 (B) exceed \$25,000.

(v) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (12)(e).

(vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections (12)(e)(i)(A)(I) through (III).

(f) The statute of limitations for prosecution for a violation of this Subsection (12) is the later of six years:

(i) from the date the tax should have been remitted; or

(ii) after the day on which the person commits the criminal offense.

(13) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Section 2. Section **59-1-402** is amended to read:

**59-1-402. Interest.**

~~[(1) Notwithstanding Subsections (2) and (3), the rate of interest applicable to certain installment sales for the purposes of the corporate franchise tax shall be determined pursuant to Section 453A, Internal Revenue Code, as provided in Section 59-7-112.]~~

(1) As used in this section:

(a) "Final judicial decision" means a final ruling by a court of this state or the United States for which the time for any further review or proceeding has expired.

(b) "Retroactive application of a judicial decision" means the application of a final judicial decision that:

(i) invalidates a state or federal taxation statute; and

(ii) requires the state to provide a refund for an overpayment that was made:

(A) prior to the final judicial decision; or

(B) during the 180-day period after the final judicial decision.

(c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

(A) a tax, fee, or charge the commission administers under:

(I) this title;

(II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(IV) Section 19-6-410.5;

(V) Section 19-6-714;

(VI) Section 19-6-805;

(VII) Section 34A-2-202;

(VIII) Section 40-6-14;

(IX) Section 69-2-5;

(X) Section 69-2-5.5; or

(XI) Section 69-2-5.6; or

(B) another amount that by statute is subject to interest imposed under this section.

(ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

(A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

(B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

(C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

(D) Chapter 3, Tax Equivalent Property Act;

(E) Chapter 4, Privilege Tax; or

(F) Chapter 13, Part 5, Interstate Agreements.

(2) Except as otherwise provided for by law, the interest rate for a calendar year for ~~all~~ ~~taxes and fees~~ a tax, fee, or charge administered by the commission shall be calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code, ~~and~~ in effect for the preceding fourth calendar quarter.

(3) The interest rate calculation shall be as follows:

(a) except as provided in Subsection ~~[(6)]~~ (7), in the case of ~~[overpayments and refunds]~~ an overpayment or refund, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate; or

(b) in the case of ~~[underpayments, deficiencies, and delinquencies]~~ an underpayment, deficiency, or delinquency, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate.

(4) Notwithstanding Subsection (2) or (3), the interest rate applicable to certain installment sales for purposes of a tax under Chapter 7, Corporate Franchise and Income Taxes, shall be determined in accordance with Section 453A, Internal Revenue Code, as provided in Section 59-7-112.

435 ~~[(4)]~~ (5) (a) Except as provided in Subsection ~~[(4)]~~(c), if any overpayment of tax or fee  
436 ~~administered by the commission~~ (5)(c), interest may not be allowed on an overpayment of a  
437 tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded within [90]:

438 (i) 45 days after the last date prescribed for filing the return [of such tax or fee, no  
439 ~~interest shall be allowed on the overpayment.]~~ with respect to the tax, fee, or charge if the  
440 return is filed electronically; or

441 (ii) 90 days after the last date prescribed for filing the return with respect to the tax, fee,  
442 or charge if the return is not filed electronically.

443 (b) Except as provided in Subsection ~~[(4)]~~ (5)(c), if the return is filed after the last date  
444 prescribed for filing the return, ~~[no]~~ interest ~~[shall]~~ may not be allowed on the overpayment if  
445 the overpayment is refunded within [90]:

446 (i) 45 days after the date the return is filed[:] if the return is filed electronically; or

447 (ii) 90 days after the date the return is filed if the return is not filed electronically.

448 (c) (i) ~~[Notwithstanding Subsection (4)(a) or (b), in]~~ In the case of an amended return,  
449 interest on an overpayment shall be allowed:

450 (A) for a time period:

451 (I) that begins on the later of:

452 (Aa) the date the original return was filed; or

453 (Bb) the due date for filing the original return not including any extensions for filing  
454 the original return; and

455 (II) that ends on the date the commission receives the amended return; and

456 (B) if the commission does not make a refund of an overpayment under this Subsection  
457 ~~[(4)]~~ (5)(c) ~~[within a 90-day]:~~

458 (I) if the amended return is filed electronically, within a 45-day period after the date the  
459 commission receives the amended return, for a time period:

460 ~~[(H)]~~ (Aa) that begins ~~[91]~~ 46 days after the commission receives the amended return;

461 and

462 ~~[(H)]~~ (Bb) subject to Subsection ~~[(4)]~~ (5)(c)(ii), that ends on the date that the  
463 commission completes processing the refund of the overpayment[:]; or

464 (II) if the amended return is not filed electronically, within a 90-day period after the  
465 date the commission receives the amended return, for a time period:

(Aa) that begins 91 days after the commission receives the amended return; and

(Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission

completes processing the refund of the overpayment.

(ii) For purposes of Subsection ~~[(4)(c)(i)(B)(H)]~~ (5)(c)(i)(B)(I)(Bb) or

(5)(c)(i)(B)(II)(Bb), interest shall be calculated forward from the preparation date of the refund document to allow for processing.

~~[(5)]~~ (6) Interest on any underpayment, deficiency, or delinquency of ~~[any tax or fee administered by the commission]~~ a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

~~[(6)(a) Notwithstanding Subsection (3)(a), interest on refunds]~~

(7) Interest on a refund relating to a tax, fee, or charge may not be paid on any overpayment that arises from a statute that is determined to be invalid under state or federal law or declared unconstitutional under the constitution of the United States or Utah if the basis for the refund is the retroactive application of a judicial decision upholding the claim of unconstitutionality or the invalidation of a statute.

~~[(b) For purposes of this Subsection (6):]~~

~~[(i) "final judicial decision" means a final ruling by a court of this state or the United States for which the time for any further review or proceeding has expired; and]~~

~~[(ii) "retroactive application of a judicial decision" means the application of a final judicial decision that:]~~

~~[(A) invalidates a state or federal taxation statute; and]~~

~~[(B) requires the state to provide refunds for overpayments that were made:]~~

~~[(f) prior to the final judicial decision; or]~~

~~[(H) during the 180-day period after the final judicial decision.]~~

~~[(7) This section does not apply to:]~~

~~[(a) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;]~~

~~[(b) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;]~~

~~[(c) Chapter 2, Property Tax Act, except for Section 59-2-1309;]~~

~~[(d) Chapter 3, Tax Equivalent Property Act;]~~

~~[(e) Chapter 4, Privilege Tax; or]~~



~~[(f) Chapter 13, Part 5, Interstate Agreements.]~~

Section 3. Section **59-1-1402** is amended to read:

**59-1-1402. Definitions.**

As used in this part:

(1) "Administrative cost" means a fee imposed to cover:

(a) the cost of filing;

(b) the cost of administering a garnishment; or

(c) a cost similar to Subsection (1)(a) or (b) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) "Books and records" means the following made available in printed or electronic format:

(a) an account;

(b) a book;

(c) an invoice;

(d) a memorandum;

(e) a paper;

(f) a record; or

(g) an item similar to Subsections (2)(a) through (f) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Deficiency" means:

(a) the amount by which a tax, fee, or charge exceeds the difference between:

(i) the sum of:

(A) the amount shown as the tax, fee, or charge by a person on the person's return; and

(B) any amount previously assessed, or collected without assessment, as a deficiency;

and

(ii) any amount previously abated, credited, refunded, or otherwise repaid with respect to that tax, fee, or charge; or

(b) if a person does not show an amount as a tax, fee, or charge on the person's return, or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

(i) the amount previously assessed, or collected without assessment, as a deficiency;

and

528 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect  
 529 to that tax, fee, or charge.

530 (4) "Garnishment" means any legal or equitable procedure through which one or more  
 531 of the following are required to be withheld for payment of an amount a person owes:

532 (a) an asset of the person held by another person; or

533 (b) the earnings of the person.

534 (5) "Liability" means the following that a person is required to remit to the  
 535 commission:

536 (a) a tax, fee, or charge;

537 (b) an addition to a tax, fee, or charge;

538 (c) an administrative cost;

539 (d) interest that accrues in accordance with Section 59-1-402; or

540 (e) a penalty that accrues in accordance with Section 59-1-401.

541 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section  
 542 6213(g)(2), Internal Revenue Code.

543 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)  
 544 means:

545 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable  
 546 year; or

547 (ii) a corresponding or comparable provision of the Internal Revenue Code as  
 548 amended, redesignated, or reenacted.

549 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

550 (i) a tax, fee, or charge the commission administers under:

551 ~~[(i)]~~ (A) this title;

552 ~~[(ii)]~~ (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

553 ~~[(iii)]~~ (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

554 ~~[(iv)]~~ (D) Section 19-6-410.5;

555 ~~[(v)]~~ (E) Section 19-6-714;

556 ~~[(vi)]~~ (F) Section 19-6-805;

557 (G) Section 34A-2-202;

558 (H) Section 40-6-14;

559           ~~[(vii)]~~ (I) Section 69-2-5;  
560           ~~[(viii)]~~ (J) Section 69-2-5.5; ~~[or]~~  
561           ~~[(ix)]~~ (K) Section 69-2-5.6~~[-];~~ or  
562           (ii) another amount that by statute is administered by the commission.  
563           (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:  
564           (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;  
565           (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;  
566           ~~[(i)]~~ (iii) Chapter 2, Property Tax Act;  
567           ~~[(ii)]~~ (iv) Chapter 3, Tax Equivalent Property Act; ~~[or]~~  
568           ~~[(iii)]~~ (v) Chapter 4, Privilege Tax~~[-];~~ or  
569           (vi) Chapter 13, Part 5, Interstate Agreements.  
570           (8) "Transferee" means:  
571           (a) a devisee;  
572           (b) a distributee;  
573           (c) a donee;  
574           (d) an heir;  
575           (e) a legatee; or  
576           (f) a person similar to Subsections (8)(a) through (e) as determined by the commission  
577           by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.